

# WETLANDS COUNCIL

## MINUTES

February 13, 2018

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The Wetlands Council met on Tuesday, February 13, 2018 in Rooms 112, 113, 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger and Bob Wolff

**Absentees:** Councilor: Gretchen Young

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:02 a.m. with introductions and a quorum present.

### 1. Approval of Minutes

- *Councilor Gove made a motion to approve the January 9, 2018 meeting minutes, second by Councilor Carbonneau. Motion passed unanimously.*

### 2. Public Input: None

Paula Scott, Appeals Clerk

### 3. Status of Appeals

#### I. New Appeals

##### Docket No. 17-17 WtC – Robert Lemieux and Richard Stopvra Appeal

Subject: 11/29/17 Administrative Order No. 17-030 WD

Hearing Officer: Not Assigned

Status: December 28, 2017 received Petition for Appeal. 12/29/17 issued Insufficient Appeal letter. January 16, 2018 received Request to Extend Revised Appeal Notice. 1/23/18 issued Ruling denying Request to Extend Revised Appeal Notice. Did not receive revised Appeal. Docket is closed.

#### II. Decisions that need to be written/finalized and issued.

##### Docket No. 17-13 WtC – Kelly Connolly, et al Appeal

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey

Hearing Officer: Not assigned

Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10.27.17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration.

- ***Councilor Henderson moved to accept the Motion for Reconsideration, second by Councilor Mellor. Discussion was held. Amendment offered of waiving the rule with the respect to the address on the envelope because the Appeal itself was accurately addressed. Amendment accepted by Henderson and Mellor. Motion and amendment passed with eleven ayes and one nay.***

### **III. Hearings or PHCs Pending**

#### **Docket No. 17-08 WtC – Robert C. Puff, Jr., et al. Appeal**

Subject: 5/8/17 Approval of Wetlands Permit #2017-00756 issued to Joseph Bussichella

Hearing Officer: Not assigned

Status: June 6, 2017 received Petition for Appeal. 6/9/17 issued Insufficient Appeal letter. 6/12/17 received Certification of Susan A. Maus joining Appeal as Appellant. 6/13/17 received Amended Petition for Appeal. 6/14/17 issued Receipt of Amended Appeal letter. Council accepted Appeal at the September 12, 2017 meeting and issued Appeal Accepted letter. September 12, 2017 received Susan A. Maus' Withdrawal as an appellant. 9/22/17 issued Notice of Pre-hearing Conference scheduled for October 30, 2017 at 1 p.m. 10/30/17 due to power outage, PHC was cancelled. 10/31/17 received PHC submission from Attorney Puff. 11/2/17 issued rescheduled PHC notice, new date and time is 11/13/17 at 10 a.m. 11/8/17 received Appearance from Joseph Bussichella. 11/13/17 issued Pre-hearing Order scheduling hearing for February 13, 2018 at 9 a.m. January 9, 2018 received Permittee's Witness and Exhibit List. 1/22/18 received Appellant's Exhibit List. February 12, 2018 received Appearance of Collis Adams. Hearing today.

#### **Docket No. 17-16 WtC – Bryan and Linda Corr Appeal**

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9<sup>th</sup> meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m.

#### **Docket No. 17-12 WtC (PNA) – Sullivan County Sportsmen, et al. Appeal**

Subject: Denial of Application for Extension of Permit #2008-02781 issued to Dept. of Fish and Game

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Recused Councilors: Carbonneau, Gove, and Henderson

Status: September 20, 2017 received Preliminary Notice of Appeal and Offer to Enter into Settlement Discussions. November 3, 2017 received Notice of Appeal. 11/6/17 issued receipt of Appeal letter. 11/22/17 received Appearance of Allen Brooks and Motion to Dismiss for Lack of Standing. 11/29/17 received Assented to Motion to Extend Deadline. 11/29/17 issued Ruling Granting motion to Extend Deadline. December 7, 2017 received Appellants' Objection to Motion to Dismiss for Lack of Standing. 12/12/17 received Appellants' Motion to Strike. 12/14/17 received State's Objection to Appellants' Motion to Strike. 12/18/17 issued Ruling denying Motion to Strike. Council to accept or dismiss appeal. Discussion was held by Council. January 9, 2018 Council accepted the Appeal. 1/11/18 issued Ruling on Acceptance and Motion For Summary Dismissal. 1/16/18 received Motion for Reconsideration. 1/26/18 received Objection to Motion for Reconsideration. 1/29/18 received Reply to Appellants' Objection to Motion for Reconsideration. February 1, 2018 received Appellants' Response to Appellee's Reply to Appellants' Objection to Motion for Reconsideration. Hearing Officer to issue ruling on Motion for Reconsideration.

### **IV. Inactive/Status Letter or Pending Settlement/Withdrawal**

#### **Docket No. 17-10 WtC – Patricia A. Rose Appeal**

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: Not Assigned

Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their

October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration.

#### **V. Misc.**

#### **4. New Business**

- a. Wetlands Council Annual Report 2017.to be sent to Governor and Executive Council.
- b. Initial discussion of draft Wetlands Rules  
Collis Adams gave a legislative update. Council members made comments and asked questions.

Draft Wetlands Rules are ready for review after being worked on 3 years. Comments are being taken until April 20<sup>th</sup>. Council members shared ideas. 5 sessions will be held around the state for sharing and listening. The Council will be informed of where the sessions are to be held. Chairman Kimball urged comments from the individual agencies be passed on Collis. When issued for formal ruling and hearing then the Council will send comments. After all the comments are received, then they will put out a revised draft, and initiate formal rulemaking through JLCAR.

The Council will meet in March regarding the rules.

#### **5. Old Business**

#### **6. Next Meeting –**

March 13 at 9 a.m. to review the draft Wetlands rules.

#### **7. Adjournment**

- ***Councilor Lievens made a motion to adjourn, second by Councilor Gove. Motion passed unanimously.***

Meeting adjourned at 9:03 a.m.

**WETLANDS COUNCIL**

**HEARING MINUTES**

**February 13, 2018**

The Wetlands Council met for  
Docket No. 17-08 WtC – Robert Puff, Jr., et al. Appeal Hearing  
Tuesday, February 13, 2018 in Rooms 112, 113, & 114  
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

**Attendees:** Chairman Chip Kimball, Councilors: Deborah Lievens, Richard Mellor, Jim Gove, Wendy Weisiger, Lee Carbonneau, Russ St. Pierre, Carol Henderson, Seth Prescott, Michael Klass and Robert Wolff

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearing's Officer David Conley at 9:15 a.m. The Hearing ended and the record was closed at 10:50 a.m.

Deliberations were held at 11:55 a.m. and closed at 12:15 p.m.